IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TINA KING,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
ARROW FINANCIAL	:	
SERVICES, LLC,	:	**No. 02-0867**
Defendant.	:	

MEMORANDUM AND ORDER

Schiller, J. **July 31, 2003**

Plaintiff Tina King commenced this action on February 20, 2002, alleging that Defendant Arrow Financial Services, LLC ("Arrow") sent her dunning letters that violated various provisions of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*. Presently before the Court are Plaintiff's motion for class certification and Defendant's motion for partial judgment on the pleadings. For the reasons set forth below, I grant Defendant's motion and deny Plaintiff's motion.

I. BACKGROUND

Consistent with the standard of review applicable to a motion to for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), the facts discussed herein are taken from the pleadings and viewed in the light most favorable to Plaintiff as the nonmoving party.

At some time prior to February 2001, JC Penney Company ("JC Penney") hired Defendant Arrow, a business engaged in collecting debts in Pennsylvania, to collect debts arising from consumer credit card purchases. (Am. Compl. ¶¶ 5, 6.) On or about February 16, 2001, Arrow sent Plaintiff Tina King a dunning letter that stated that it was offering "a second chance to resolve [her

alleged] debt" and included various warnings, including the warning that Arrow would assume the alleged debt to be valid unless Plaintiff sent notification of a dispute within thirty days. (*Id.* ¶ 8, Ex. A.) Shortly thereafter, Ms. King responded in writing that she disputed the validity of the debt. (*Id.* ¶ 10.) Arrow did not provide Ms. King with verification of the alleged debt or otherwise answer Ms. King's letter. (*Id.* ¶ 11.) On or about September 4, 2001, Arrow sent Ms. King a second dunning letter. (*Id.* ¶ 12.) On February 20, 2002, counsel for Ms. King filed a Complaint in this action, and the Complaint was served on Defendant on March 1, 2002.

On or about March 8, 2002, Arrow sent Ms. King a third dunning letter ("March letter") that stated the following:

> AT THIS TIME OUR CLIENT IS WILLING TO SETTLE YOUR PAST DUE ACCOUNT FOR 40% OF THE FULL BALANCE AND ACCEPT THIS AMOUNT AS SETTLEMENT OF THE REFERENCED ACCOUNT. THE SETTLEMENT AMOUNT MUST BE MADE IN ONE PAYMENT AND RECEIVED BY OUR OFFICE ON OR BEFORE April 3 2002[*sic*].

(Am. Compl., Ex. E.) This letter also included warnings tracking the language of the FDCPA. *See* 15 U.S.C. § 1692g (2003). Moreover, Arrow sent letters nearly identical to the March letter to numerous other consumers. (Am. Compl. ¶ 25; Pl.'s Memo. of Law. in Reply to Def.'s Opp. to Class Cert. Ex. A (Def.'s Resp. to Req. for Admiss. ¶ 22).)

II. STANDARD OF REVIEW

A. Motion for Partial Judgment on the Pleadings

Federal Rule of Civil Procedure 12(c) permits a party to move for judgment "after the pleadings are closed but within such time as not to delay the trial. . . ." FED. R. CIV. P. 12(c). A party moving for judgment on the pleadings under Rule 12(c) must demonstrate that there are no

disputed material facts and that judgment should be entered in its favor as a matter of law. *See Jablonski v. Pan American World Airways, Inc.*, 863 F.2d 289, 290 (3d Cir. 1988). In evaluating a Rule 12(c) motion, courts must view the pleadings in the light most favorable to, and draw all inferences in favor of, the nonmoving party. *See Soc'y Hill Civic Ass'n v. Harris*, 632 F.2d 1045, 1054 (3d Cir. 1980).[1]

B. Motion for Class Certification

In order for a suit to be maintained as a class action, a plaintiff must allege facts establishing each of the four threshold requirements of Rule 23(a):

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

FED. R. CIV. P. 23(a). Additionally, a plaintiff seeking class certification must satisfy at least one of the separate provisions of Rule 23(b), before class certification will be granted.

III. DISCUSSION

A. Motion for Partial Judgment on the Pleadings

Congress enacted the FDCPA in 1977 "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e). Accordingly, the FDCPA provides remedies for consumers who have been subjected to abusive, deceptive, or unfair debt collection

[1] As a practical matter, the standard governing motions for judgment on the pleadings pursuant to Rule 12(c) is similar to that governing motions to dismiss under Rule 12(b)(6). *See Children's Seashore House v. Waldman*, 197 F.3d 654, 657 n.1 (3d Cir. 1999).

practices by debt collectors. *See Pollice v. Nat'l Tax Funding, L.P.*, 225 F.3d 379, 400 (3d Cir. 2000). "Among the practices prohibited by the FDCPA is the use of 'any false, deceptive, or misleading representation or means in connection with the collection of any debt'." *See Zimmerman v. HBO Affiliate Group*, 834 F.2d 1163, 1167 (3d Cir. 2000) (*quoting* 15 U.S.C. § 1692e).[2]

In determining if a defendant's communications were false, deceptive or misleading within the meaning of § 1692e, courts apply the "least-sophisticated-consumer" standard. *See Swanson v. S. Or. Credit Servs., Inc.*, 869 F.2d 1222, 1227 (9th Cir. 1988); *Dutton v. Wolhar*, 809 F. Supp. 1130, 1135 (D. Del. 1992). The Third Circuit has explained that this standard comports with basic consumer protection principles:

> The basic purpose of the least-sophisticated-consumer standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd. This standard is consistent with the norms that courts have traditionally applied in consumer-protection law. . . .

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[2] Plaintiff asserts that the March letter violated §§ 1692e, 1692e(2)(A), 1692(e)(5), 1692e(10) and 1692f. Section 1692e provides:

> A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
>
> * * *
>
> (2) The false representation of–
>
> (A) the character, amount, or legal status of any debt;
>
> * * *
>
> (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.
>
> * * *
>
> (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

15 U.S.C. § 1692e. Section 1692f provides, generally, that "[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.

Wilson v. Quadramed Corp., 225 F.3d 350, 354 (3d Cir. 2000) (quotations omitted). "[A]lthough this standard protects naive consumers, it also prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness and presuming a basic level of understanding and willingness to read with care." *Id*. at 354-55 (quotation omitted).

Defendant's motion seeks partial judgment with respect to Plaintiff's claim that the contents of the March letter violated the FDCPA. Defendant's argument, simply stated, is that there is nothing coercive, abusive, or deceptive in the March letter, and, consequently, it does not violate the FDCPA. In response, Plaintiff has two central arguments. First, Ms. King asserts that the March letter was deceptive insofar as it contained an apparently temporary settlement offer when, in fact, a settlement would have been accepted after the expiration of the stated deadline. Second, Plaintiff objects to the use of the words "our client," alleging that Arrow was the sole owner of Ms. King's account by the time it sent the March letter. Each argument is considered below.

1. Settlement Offer

In opposing Defendant's motion for partial judgment on the pleadings, Plaintiff correctly points out that courts have held that "one-time settlement offers" and "final demands" for settlement may violate the FDCPA. For example, in rejecting the defendant's motion to dismiss, a court found that the following sentence conveying a one-time settlement offer was sufficient to state a claim under the FDCPA: "If settlement amount is not received by the date indicated above, the offer will be null and void and the entire balance outstanding will be due." *Pleasant v. Risk Mgmt. Alternatives*, Civ. A. No. 02-6886, 2003 WL 164227, at *1, 2003 U.S. Dist. LEXIS 890, at *1-2 (N.D. Ill. Jan. 23, 2003). Similarly, an attorney's representation in a dunning letter that he had "convinced [his] client to give you one last opportunity to settle this matter" was found to be false,

deceptive, or misleading. *Villareal v. Snow*, Civ. A. No. 95-2484, 1996 WL 283808, at *2, 1996 U.S. Dist. LEXIS 660, at *9 (N.D. Ill. Jan. 19, 1996); *see also, e.g.*, *Herbert v. Monterey Fin. Serv.*, 863 F. Supp. 76, 80 (D. Conn. 1994) (finding that dunning letter stating "final demand" for payment was objectively false where collection agency subsequently contacted consumer in attempt to receive payment).

These decisions are based on two considerations. First, when a collection agency expressly states that it is making a final demand or a one-time settlement offer, when it will in fact make further settlement offers, the agency attempts to use a false sense of finality to its advantage, thereby employing a deceptive means of collecting debts. Second, in some instances the final demand and one-time settlement letters state a date by which payment must be received in order to avert the commencement of the lawsuit, when, in fact, no lawsuit is intended. This practice has also been found to violate the FDCPA prohibitions against "threat[ening] to take any action . . . that is not intended to be taken." 15 U.S.C. § 1692e(5); *see also Jeter v. Credit Bureau*, 760 F.2d 1168, 1175-77 (11th Cir. 1985).

In contrast, the March letter does not state that the agency is conveying a "one-time" or "final" offer. Rather, the letter sets forth the terms of the settlement offer in a straightforward fashion. The offer does not mention, or imply, that the agency will commence – or recommend the commencement of – a lawsuit if the payment is not received. While Ms. King takes the position that Arrow would have accepted a settlement after the stated deadline, this allegation, which must be accepted for present purposes, does not show that the letter violates the FDCPA. The inclusion of a deadline for acceptance of the settlement is merely a term of the settlement offer, and the least sophisticated consumer would interpret it as such. Put differently, the March letter does not contain

any language that could be understood by the least sophisticated consumer – absent some tortured and idiosyncratic reading – that would be taken as threatening, deceptive, or misleading.

2. Reference to "Client"

Plaintiff also argues that Arrow had purchased Ms. King's account from JC Penney, and, therefore, the reference in the March letter to "our client" was in violation of the FDCPA. A similar issue was addressed in *Aronson v. Commercial Financial Services*, Civ. A. No. 96-2113, 1997 WL1038818, 1997 U.S. Dist. LEXIS 23534 (W.D. Pa. Dec. 22, 1997), *aff'd*, 162 F.3d 1150 (3d Cir. 1998). In *Aronson*, a debt collection agency incorrectly addressed a consumer with defaulted credit card accounts as "Dear Customer" in a dunning letter, and the consumer brought suit against the collection agency, alleging, inter alia, that the agency had violated of §§ 1692e(2)(A) and 1692e(10). *See* 1997 WL1038818, at * 1-2, 1997 U.S. Dist. LEXIS 23534, at *6-8. The *Aronson* court noted that the letter was erroneous in referring to the plaintiff as a customer, but nonetheless held that the FDCPA was not violated:

> [The collection agency] did not attempt to mislead or deceive Aronson through the [letters]. In addition, the letters properly track the language required by 15 U.S.C. § 1692g. Therefore, the [letters] did not misrepresent the nature of the debt under 15 U.S.C. § 1692e(2)(A) and were not a false, misleading, or deceptive attempt to collect a debt under 15 U.S.C. § 1692(e)(10).

1997 WL1038818, at *3, 1997 U.S. Dist. LEXIS 23534, at *9-10. The reasoning underlying the *Aronson* decision applies with equal force to the instant case. The allegedly incorrect use the term "client" does not misrepresent the nature of the debt, and its effect on the least sophisticated consumer is, at most, de minimis. Although the pro-consumer objectives of the FDCPA are broad, they do not encompass an incorrect statement that has no material affect on the collection of a debt.

Accordingly, the argument related to the use of the word "client" is unpersuasive, and Plaintiffs have failed to state a claim under the FDCPA with respect to the March letter.

B. Motion for Class Certification

Because all of the allegations related to the putative class arise from the March letter, in light of my conclusion that the letter does not violate the FDCPA, there is no basis for granting class certification. In addition, class certification is not warranted for an another reason. Ms. King's claims present different considerations than those of the other putative class members. Specifically, Arrow takes the position that Plaintiff may have received the March letter because of a bona fide error or mistake insofar as the letter should not have been sent to her because she had recently commenced a lawsuit against Arrow. (Def.'s Resp. to Mot. for Class Cert. at 16.)[3] A proposed class representative is not typical if the proposed representative is subject to a unique defense that threatens to play a major role in the litigation. *See Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 903 F.2d 176, 179-80 (2d Cir. 1990). In the instant case, this defense, if established, would render her claims related to the March letter without merit, and, as such, Ms. King is not a typical class representative because her claims present factual and legal issues that are not common to the putative class. For these reasons, class certification must be denied.

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[3] The FDCPA provides: "A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. § 1692k(c).

IV. CONCLUSION

Accordingly, I grant Defendant's motion for partial judgment on the pleadings and deny Plaintiff's motion for class certification. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TINA KING,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
ARROW FINANCIAL	:	
SERVICES, LLC,	:	**No. 02-0867**
Defendant.	:	

ORDER

AND NOW, this **31st** day of **July, 2003**, upon consideration of Plaintiff's Renewed Motion for Class Certification and Defendant's Motion for Partial Judgment on the Pleadings and the responses and replies thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Plaintiff's Renewed Motion for Class Certification (Document No. 19) is **DENIED**.

2. Defendant's Motion for Partial Judgment on the Pleadings (Document No. 20) is **GRANTED**. Judgment is entered in favor of Defendant and against Plaintiff on Plaintiff's claims arising from or relating to the content of Defendant's letter dated March 8, 2002 as set forth in Paragraphs 14, 15, 19 through 21, and 24 through 32 of Plaintiff's Amended Complaint.

3. Defendant shall file an Answer to the remaining claims in Plaintiff's Amended Complaint by **August 18, 2003**.

BY THE COURT:

Berle M. Schiller, J.